

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Calvin Jerome McMillan,

Plaintiff,

vs.

Ratner Companies; Dennis Ratner,

Defendants.

Civil Action No. 3:19-cv-1698-CMC

**ORDER**

This matter is before the court on Plaintiff's Amended Complaint alleging breach of contract and conspiracy to commit offense pursuant to 18 U.S.C. § 371.<sup>1</sup> ECF No. 11. He claims his ex-wife made an allegation he abused his children, which was false, and as a result he lost his business, home, and children. *Id.* at 5. He attached a statement of claim with further detail about his job and co-workers at Hair Cuttery, settlement with Hair Cuttery, move to South Carolina, and dealings with his divorce attorney. ECF No. 11-1. He alleges a "conspiracy to defraud my character in order to reverse the agreement made in 2004 with The Hair Cuttery Corp. and myself." *Id.* at 3.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings and a Report and Recommendation ("Report"). On July 19, 2019, the Magistrate Judge issued a Report recommending this matter be summarily dismissed with prejudice and without issuance

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<sup>1</sup> After Plaintiff filed his initial Complaint, it was reviewed by the Magistrate Judge, who entered an Order and notice informing Plaintiff of deficiencies in his Complaint and allowing time for amendment. ECF No. 9. Plaintiff thereafter filed his Amended Complaint.

and service of process. ECF No. 14. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has not filed objections, and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

The Report recommends the Amended Complaint be dismissed because subject matter jurisdiction is lacking, as the allegations are insufficient to support jurisdiction. ECF No. 14 at 5. The Report notes Plaintiff has failed to allege the elements of breach of contract under 41 U.S.C. § 6503, which must involve a contract made by an agency of the United States, and 18 U.S.C. §§ 371 or 377, invoked by Plaintiff, is a criminal statute that does not support a civil action. *Id.* at 5-6.

The court agrees with the Magistrate Judge that Plaintiff's filings do not reveal a basis for subject matter jurisdiction over his claims. Plaintiff has had an opportunity to amend his Complaint, and was unable to allege facts supporting subject matter jurisdiction in an amended pleading.

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the Report. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff's Amended Complaint is dismissed with prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

s/Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
Senior United States District Judge

Columbia, South Carolina  
August 19, 2019